IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special original Jurisdiction)

THURSDAY, THE EIGHTH DAY OF JULY

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE G.BIKSHAPATHY

AND

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 8675 OF 2004

Between:

Malam Kumari, W/o Late Malam Koteswara Rao,

42 years, Gardner No.5857, Municipal Corporation

of Vijayawada, Vijayawada,

Krishna District.

…….. PETITIONER

AND

1. Commissioner, Municipal Corporation of
   Vijayawada, Vijayawada, Krishna District
2. M.Venkata Hari Prasad, S/o Koteswara Rao,
   Aged 32 years, Advocate, r/o

Yenamalakuduru, Vijayawada, Krishna District

……RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or direction more particularly one in the nature of "Writ of Mandamus" calling for the records connected with the order dated 23-01-2004 in O.A.No.3781 of 2002 on the file of the Hon"ble A.P. Administrative Tribunal, at Hyderabad and quash the same as illegal and erroneous.

For the Petitioner: Mr.P.V.Krishnaiah, Advocate

For the Respondents : R1 Mr.T.S.VENKATARAMANA, Standing Counsel for Municipal Corporation.

R2 Mr. K.G.K.PRASAD, Advocate

The court made the following:

ORDER: (G.Bikshapathy, J)

1. This Writ Petition is filed challenging the order passed by Andhra Pradesh Administrative Tribunal, at Hyderabad in O.A.No.3781 of 2002 dated 23-01-2004. The petitioner herein was the applicant before the Tribunal. She filed O.A.No.3781 of 2002 challenging the proceedings issued by the Commissioner, Municipal Corporation of Vijayawada in Proceedings Rc.No.C.7/3449/2000 dated 23-02-2002 and for consequential direction to reinstate the petitioner forthwith into service.

2. Sri.Koteswara Rao was working as Bill Collector in Vijayawada Municipal

Corporation. His wife pre-deceased him and thereafter he married the petitioner herein in the year 1989. However, the said Koteswara Rao died while in service on 2-1-2000. Therefore, an application was made by the petitioner seeking payment of terminal benefits and also for appointment under compassionate grounds in accordance with the relevant rules and guidelines issued by the Government. After making necessary enquiry, the petitioner was appointed as Gardner by proceedings dated 4.12.2000. However, during the course of her employment it came to light that she misrepresented certain facts to the authorities, that she is the legally wedded second wife of the deceased Koteswara Rao, and obtained the employment. Therefore, a show cause notice dated 7.1.2002 was issued to her calling upon her as to why her employment should not be terminated and she was directed to submit her explanation. Not satisfied with her explanation, finally, the authorities issued orders dated 23/26-2-2002 terminating her services. Aggrieved by the said order of termination, she filed O.A.No.3781 of 2002 before the learned A.P. Administrative Tribunal, at Hyderabad. The learned Tribunal by an order dated 23-1-2004 dismissed the application of the petitioner, against which the present Writ Petition has been filed.

3. Heard the learned counsel on either side.

4. Learned counsel for the petitioner submits that the findings of Tribunal are illegal and contrary to law. His main submission is that the termination orders were passed without conducting any inquiry as contemplated under Rule 20 of A.P. CS (CCA) rules, 1991 and that the same contention, though, was raised before the Tribunal, has not been considered and thus the order of the Tribunal is erroneous and the same is liable to be set aside. He also submits that before the appointment was made an enquiry was conducted and she was found to be the second wife of Koteswara Rao and therefore the authorities have appointed her under compassionate appointment scheme and hence the order of termination of services ought to have been set aside by the learned Tribunal.

5. Learned counsel appearing for R2 submits that the petitioner had suppressed material information of having married one Mr.Kotaiah and therefore the marriage alleged to have taken place with Sri.Koteswara Rao was not a valid marriage and therefore she was not entitled for the appointment. However, when R2 was a minor he could not effectively defend the case. Therefore, the order passed by the Tribunal cannot be said to be illegal or contrary to law.

6. On the intervention of this court, both the parties were directed to have consultation with regard to the amicable settlement and after due deliberations with their respective counsel, parties filed a joint memo resolving their disputes permanently including the dispute relating to the properties, employment, validity of marriage and consequential employment to Kum.M.Vijayalakshmi. A joint compromise memo dated 7.7.2004 is filed in the court. Under the terms of compromise, it is now mutually consented by the parties that the petitioner has no objection for foregoing the right to claim the employment and that she may be allowed to enjoy the benefit of pension and the house bearing No.23-152 of Yenamalakuduru village, Penamaluru Mandal subject to certain other conditions as prescribed in the compromise memo dated 7.7.2004. It is also agreed that the petitioner has no objection for appointment of Kum.M.Vijayalakshmi under compassionate appointment scheme.

7. The issue that arises for consideration is whether the order passed by the Tribunal is justified. As can be seen from the record, the authorities have not conducted any proper enquiry with regard to the validity of the marriage. In fact, the authorities without there being any proper record came to an erroneous conclusion that the marriage was invalid in law. We find that the petitioner was not given any proper opportunity to represent her case effectively before the authorities, which led to the erroneous decision, by the Tribunal. Be that as it may, since the matter has now taken a different turn that the 2nd respondent is not disputing the second marriage and the petitioner is not claiming employment in view of the settlement entered into between the parties and that the daughter of the deceased Koteswar Rao viz. Kum.M.Vijayalakshmi is claiming, we dispose of the writ petition with the following directions:

i. That the petitioner is not eligible for claiming the employment under compassionate appointment scheme. The daughter of the deceased Koteswar Rao viz., Kum.M. Vijayalakshmi shall be considered by R1-Commissioner, Municipal Corporation of Vijayawada, Vijayawada, Krishna District for employment under compassionate appointment scheme commensurate with the qualifications and in accordance with the Rules.

ii. The terms and conditions of the compromise filed in this court shall form part of this order and the same shall be annexed to this order.

iii. It is brought to the notice of this court that Kum.M.Vijayalakshmi has already made an application for appointment, which is said to be under consideration. Therefore, R1-Commissioner, Municipal Corporation of Vijayawada is directed to consider her application and pass appropriate orders as directed above within a period of two months from the date of receipt of a copy of this order.

iv. The other benefits as agreed between the parties shall be released by R-1 within a period of six weeks from the date of receipt of a copy of this order.

8. This Writ Petition is disposed of with the above directions. No costs.

Tnb

Dated: 08-07-2004 (G.Bikshapathy, J)

CC in one week.

(B.Seshasayana Reddy, J)

To

1. Commissioner, Municipal Corporation of

Vijayawada, Vijayawada, Krishna District.

2. 2 C.D. copies